IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/10/2003

Coram

The Honourable Mr. Justice V. KANAGARAJ

C.R.P. No.513 of 2000
and
C.M.P. No.2559 of 2000

Govindasamy ... Petitioner

-Vs-

1. Velchami
2. Ramar
3. Paramasivam ... Respondents

Petition filed under section 115 C.P.C. praying for as stated below.

For Petitioner : Mr. T. Srinivasaraghavan

For Respondents: Mr. Thirunavukkarasu for R2

:O R D E R

This Civil Revision Petition is directed against the fair and decretal order dt.27.10.99 made in I.A. No.317 of 1999 in O.S. No.212 of 1998 by the Court of Principal District Munsif, Srivilliputhur and to set aside the same on grounds that the orders of the Lower Court are vitiated by material irregularities in the exercise of jurisdiction and if it is allowed to stand, would occasion failure of justice and would cause irreparable injury to the petitioner; that the Court below failed to appreciate the rival contentions of the parties and the questions emerging therein and the same has vitiated the entire order; that the Lower Court failed to note that the proposed amendment did not alter the nature of the suit nor had it introduced any new cause of action and the relief remained untouched. On such grounds, the petitioner would pray to the relief extracted supra.

2. Tracing the history of the case, it comes to be known that it is the plaintiff, who has filed the petition under Order 6 Rules 17 and 18 and under section 151 C.P.C., praying to amend the plaint as given in the schedule of amendment in a suit filed by the same petitioner for declaration to the effect that the suit properties for item Nos.1 and 2 of the schedule of properties are absolutely belonging to him and for permanent injunction from

demolishing a wall and preventing the defendants from laying of waste water from plaintiff's house to second defendant's property and for mandatory injunction, directing the defendant to close the pit. The suit is ripe for trial.

3. Learned counsel appearing on behalf of the petitioner, besides bringing forth the facts as pleaded in the petition, would also cite a decision reported in VAIJANTHI, SO. v. RAGHURAMAN @ BHARATHI ((2001(3) C.T.C. 662), which is an order passed by this Court itself in another C.R.P. on 20.03.2001, wherein it is held as follows:-

" Suit for specific performance of agreement relating to immovable property filed Plaintiff filed application to amend plaint and correct certain errors in description of property and irregularities in names of parties to documents on ground that such errors and irregularities crept in due to mistake Trial Court dismissed application holding that amendment of suit property would lead to contradictions in description of property as plaint document contained different description - Description of property should conform to actual existence even if it is not so described in document - Errors may be in document itself - Such amendment will not introduce new cause of action and will not cause prejudice to other side."

4. On the other hand, learned counsel for the second respondent would submit that the case of the respondents is that the plaintiff has encroached into his property and put up the well; that the amendment sought for is to alter the measurement of the suit property and to improve the case of the plaintiff in such a way to suit his convenience, so as to place the respondents at a disadvantageous position, in which event, he would definitely be prejudiced against allowing such amendment and hence he would pray to dismiss the above C.R.P.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, particularly going through the order of the Lower Court carefully, this Court is able to find that the Lower Court, having traced the facts, as pleaded by parties and having formed its own points for consideration and based on such evidence available on record, particularly, the commissioner report and points mentioned in the original plaint, which portion has been shown as belonging to the defendant. The plaintiff now by the amendment, seeks to show that is belonging to him, which cannot be permitted, since it is susceptible to alter the structure of the plaint and change of cause of action and therefore has arrived at a conclusion to dismiss the amendment petition filed by the plaintiff, thus dismissing the same accordingly.

6. There is absolutely no dispute, not only in the conclusions arrived at by the Lower Court to the effect that the amendment sought to be introduced in the plaint is of the nature to alter the basic structure of the suit, but also change the cause of action and therefore the same cannot be permitted to be carried out and hence this Court does not find any valid ground existing to cause interference into the well considered and merited order passed by the Trial Court in the above interlocutory application

as per its order dt.27.10.99 and hence this Court is left with no choice, but to arrive at the following decision:-

In result,

(i) there is no merit in the above C.R.P. and in all respects, it becomes liable only to be dismissed and is dismissed accordingly.

(ii) Consequently, C.M.P. No.2557 of 2000 is also dismissed.
ssa.
Index:- Yes
Website:- Yes

To
The Principal District
Munsif,
Srivilliputhur.